



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 10, 1994

Ms. Diana L. Granger
City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR94-004

Dear Ms. Granger:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).¹ Your request was assigned ID# 18703.

The City of Austin (the "city") received an open records request from an attorney for "any and all documents relating to my clients' Lis Pendens, including, but not limited to, title commitments, bonds, legal opinions, correspondence, agreements, contracts and warranties, regarding my clients' pending lawsuit, claims and the related Lis Pendens." You explain that the lis pendens was filed by the requestor's clients in litigation that is pending in U.S. district court, and that, although the city is not a party to that litigation, it currently has title to the property on which the lis pendens is filed. You contend that the requested information comes under the protection of section 552.103 (former section 3(a)(3)) of the Open Records Act.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision Nos. 588 (1991); 452 (1986). The mere chance of litigation will not trigger the section 552.103 exception. Open Records Decision Nos. 437 (1986); 331, 328 (1982). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific

¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg. ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

matter is realistically contemplated and is more than mere conjecture. Open Records Decision No. 437 at 3.

You contend that the requested information comes under the protection of section 552.103 of the Open Records Act because "the only way in which [the requestor] would be able to utilize this information is by making the City a party to the lawsuit, so that the City can make a claim on its title policy and provoke a settlement of the suit." We note, however, that section 552.222 (former section 5(b)) of the Open Records Act prohibits a governmental body from considering the motives of the requesting party. Consequently, any perceived purpose for which the requestor may use information sought under the act is not relevant in this office's determination as to whether a particular exception applies. *See, e.g.,* Open Records Decision No. 508 (1988). Outside of your speculations, you have provided this office with no evidence that the requestor is contemplating filing suit against the city at this time or joining the city as a party to the pending litigation. We therefore cannot conclude that litigation against the city regarding this matter is reasonably anticipated at this time. Because you have not met your burden under section 552.103, the city must release the requested information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref.: ID# 18703

Enclosure: Submitted documents

cc: Mr. Brad Wiewel
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(w/o enclosures)